



Bail Slip

N.Soman, S/o.Narayanan, aged 51 years, male was released on bail vide order of this Court dated 13/06/2016 made in MP(MD)No.1 of 2015 in Cr1.R.C(MD)No.554 of 2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2020

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

CRL.R.C. [MD]No.554 of 2015

and

M.P. [MD]No.2 of 2015

N.Soman

..Petitioner/Appellant/Accused

Vs.

Mani Alexandar

..Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., praying to call for the records relating to the judgment passed by Mahila Fast Track Court, Nagercoil in Cr1.A.[MD]No.51 of 2013 dated 09.07.2015 confirming the conviction and sentence passed by Learned Judicial Magistrate No.II, Fast Track Court, Nagercoil in C.C.No.629/2012 dated 04.07.2013 and set aside the same and consequently acquit the petitioner from the charges u/s. 138 of Negotiable Instruments Act.

For Petitioner : Mr.K.P.Narayanakumar

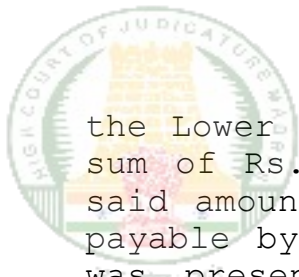
For Respondent : Mr.L.George Paul Anto

ORDER

This Criminal Revision Case is filed by the accused against the concurrent finding of conviction awarded by the Lower Court as well as the Lower Appellate Court.

2.For the sake of convenience, the parties are referred to by their own rankings before the trial Court.

3.The case of the petitioner is that the petitioner is the accused in C.C.No.629 of 2012, for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). The respondent / complainant has filed a complaint before



the Lower Court, stating that on 26.08.2008, the accused borrowed a sum of Rs.1,85,000/- as loan for business expenditure and for the said amount, he issued a cheque bearing No.036072 dated 19.01.2009 payable by the Corporation Bank, Nagercoil Branch. The said cheque was presented on 20.01.2009, before the Indian Bank, Nagercoil Branch and the said instrument was returned with endorsement "Funds Insufficient". In spite of the repeated request from the complainant, the accused failed to repay the said amount. Thereafter, the complainant has sent a legal notice on 27.01.2009, demanding the cheque amount within 15 days and the accused has received the legal notice on 28.01.2009. However, the accused neither sent any reply notice nor paid the cheque amount. Therefore, the said complaint was filed before the trial Court.

4. On behalf of the complainant, he himself was examined as P.W.1 and Exs.P.1 to P.6 were marked. On the side of the accused, three documents were marked as Ex.R.1 to R3 and no witnesses were examined. After hearing the rival submissions, the trial Court has found the accused guilty for the offence under Section 138 of the Act and sentenced her to undergo rigorous imprisonment for three [3] months and to pay a compensation of Rs.1,50,000/-, since a sum of Rs.35,000/- has already been paid to the complainant under Section 357(3) of Cr.P.C.

5. Assailing the said order, the accused preferred an appeal before the Lower Appellate Court. The Lower Appellate Court has confirmed the sentence given by the trial Court. Against the concurrent findings, the present Criminal Revision Case came to be filed.

6. Mr.K.P.Narayanakumar, learned counsel appearing for the accused, on instructions, would submit that already a sum of Rs.35,000/- of the cheque amount has been paid by the accused and prays that this Court may fix the compensation as Rs.1,50,000/- that is instrument amount and may permit the complainant to withdraw the said amount and compound the offence against the accused.

7. Mr.L.George Paul Anto, learned counsel appearing for the complainant, on instructions, would submit that the balance amount of Rs.1,50,000/- may be directed to be deposited and the same may be permitted to be withdraw by the complainant. He would further submit that the complainant has no objection in respect of compounding the offence.

8. In the case of **Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663]**, the Full Bench of the Hon'ble Supreme Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court.



In this regard, it is useful to extract hereunder paragraph Nos. 16 and 17:

'16. It is evident that the permissibility of compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V.Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p.444]

'17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the Court.'

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act - Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

'...Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.'

9. With the above principles in mind, if this Court looks at the present case, it is purely a commercial transaction and Section 147 of the Act also empowers this Court to compound the offence under section 138 of the Act.

10. In view of the ratio laid down by the Hon'ble Apex Court and considering the consent view expressed by the learned counsel appearing for the petitioner and the respondent and also the petitioner and the respondent and the revision petitioner himself



has come forward to pay the entire compensation amount and seeks modification the order of punishment and the respondent has also no objection for the same, the conviction ordered by the Courts below are confirmed, however, the sentence is modified as follows:-

The petitioner/accused shall pay a sum of Rs.1,50,000/- to the respondent as compensation, failing which, the sentence imposed by the trial court stands confirmed. On such deposit is being made, this Court permits the respondent/complainant to withdraw the deposited amount with accrued interest.

11.With the above modification, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Judge,
Mahila Fast Track Court, Nagercoil.
- 2.The Judicial Magistrate No.II,
Fast Track Court, Nagercoil.
- 3.-Do-Thro' The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Record Clerk,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.P.Narayanakumar, Advocate Sr.No.10667
+1cc to Mr.L.George Paul Anto, Advocate Sr.No.10441

AKM/18.05.2020/4P-8C/